Agenda - Council - May 16, 2007

Report - Standing Policy Committee on Infrastructure Renewal and Public Works - May 8, 2007

Item No. 3 Revised Boulevard Maintenance By-law
File PB-1

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 9, 2007, the Executive Policy Committee concurred in the administrative recommendation, as amended, and submits the following to Council:

1. That the revised Boulevard Maintenance By-law, as outlined in the report dated December 15, 2006, from the Director of Public Works and incorporating an amendment to exclude fruits and vegetables except as approved by the Director of Public Works, be enacted.

2. That, since objects and vegetation become the property of the City when placed or planted in boulevards, the City should not pay claims for damage to objects or vegetation in boulevards.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

STANDING COMMITTEE RECOMMENDATION:

On May 8, 2007, due to a tie vote, the Standing Policy Committee on Infrastructure Renewal and Public Works submitted the matter to Council without recommendation.

Report - Standing Policy Committee on Infrastructure Renewal and Public Works - May 8, 2007

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 9, 2007, the Executive Policy Committee concurred in the administrative recommendation, with the following amendment, namely:

- Recommendation 1
  Add the words "and incorporating an amendment to exclude fruits and vegetables except as approved by the Director of Public Works"

and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 8, 2007, due to a tie vote, the Standing Policy Committee on Infrastructure Renewal and Public Works submitted the matter to the Executive Policy Committee and Council without recommendation.

RE: REVISED BOULEVARD MAINTENANCE BY-LAW

FOR SUBMISSION TO:	**Standing Policy Committee on Infrastructure Renewal and Public Works**
ORIGINAL REPORT SIGNED BY:	**L.S.W. Larkin, Director of Public Works**
REPORT DATE:	**December 15, 2006**

RECOMMENDATION:

1. That the Standing Policy Committee on Infrastructure Renewal and Public Works recommend that Council enact the attached revised Boulevard Maintenance By-law.

2. That, since objects and vegetation become the property of the City when placed or planted in boulevards, the City should not pay claims for damage to objects or vegetation in boulevards.

3. That the proper officers of the City do all things necessary to carry out the intent of the forgoing.

Report Summary

Key Issues:

- The proposed By-law would reduce "red tape" by allowing property owners to beautify their adjacent boulevard without a permit so long as by-law standards are met.

- The proposed By-law reinforces the law that any items/ vegetation that are placed/planted on the boulevard becomes City property and may be removed or destroyed without the consent of and without compensation to the owner of the adjacent property (e.g. snow removal, utility works, etc.).

- The proposed By-law retains the existing obligation on property owners to maintain the boulevards adjacent to their properties and prohibits damaging, parking or crossing boulevards without a permit.

Implications of the Recommendation(s):

General Implications

( ) None

(X) For the organization overall and/or for other departments

(X) For the community and/or organizations external to the City

( ) Involves a multi-year contract

Comment(s): The proposed By-law would reduce “red tape” by allowing property owners to beautify their adjacent boulevard without a permit so long as by-law standards are met.

Policy Implications

( ) No

(X) Yes

Comment(s): The proposed By-law would reduce “red tape” by allowing property owners to beautify their adjacent boulevard without a permit so long as by-law standards are met.

Regulatory Implications

( ) None

(X) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s): The proposed By-law would reduce “red tape” by allowing property owners to beautify their adjacent boulevard without a permit so long as by-law standards are met

Environmental Implications

(X) No

Yes

Comment(s):

Human Resources Implications

(X) No

( ) Yes

Comment(s):

Financial Implications

(X) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Comment(s):

Report

REASON FOR THE REPORT:

Only Council can enact By-laws.

The Standing Policy Committee on Infrastructure Renewal and Public Works has the responsibility to consider and report to Council through Executive Policy Committee on matters respecting streets. Boulevards are part of the street.

HISTORY:

The current By-law was enacted in 1992. It repealed "By-laws, Resolutions and Orders passed prior hereto by an Area Municipality … relating to the use and maintenance of boulevards…"

While it has been amended several times, the By-law has not been revised in the intervening 14 years.

Section 147 of *The City of Winnipeg Charter* specifically authorizes the City to require owners or occupants to maintain boulevards that abut their land.

There is a provision of Schedule A of the Encroachment By-law, adopted in 1982, that sets out rules for rockscaping on boulevards in the St. Boniface – St. Vital Community. However, this provision is so little-used that City staff were unaware of its existence.

DISCUSSION:

Boulevards exist as part of a street for:

- safety – provides a buffer between vehicles and pedestrians
- snow storage
- improved sightlines for drivers and pedestrians
- utility installations (example: telephone poles, hydro boxes, fire hydrants
- access to underground utilities (example: MTS, water, cable)
- provides land for our urban forest

The existing By-law is designed to:

- protect boulevards from damage; and
- requires homeowners to maintain boulevards adjacent to their properties.

In order to ensure that boulevards are protected from harm, the existing By-law requires the homeowner to obtain written authorization from the Director of Public Works to apply a non-standard boulevard treatment Property owners have beautified their boulevard typically by planting flowers and small shrubs. However, in general, these non-standard boulevard treatments have been installed without written permission from the Director.

By authorizing non-standard boulevard treatments that comply with the standards in the proposed By-law this would eliminate the need for written permission from the Director and would therefore reduce “red tape”; while retaining the two main goals of the existing By-law.

- protect boulevards from damage; and
- requires homeowners to maintain boulevards adjacent to their properties.

The standards set out in the proposed By-law are designed to:

- prevent interference with vehicular and pedestrian traffic (including obstruction of sight lines);
- prevent obstruction of access to fire hydrants and other installations in the boulevard;
- assist in snow removal efforts by permitting the storage and removal of snow in the boulevard during the winter;
- prevent the spread of noxious weeds;
- prevent obstruction of passengers exiting or entering vehicles parked beside the curb;
- prevent the creation or widening of private approaches without authorization under the Private Approaches By-law;
- ensure proper drainage to the adjacent street;
- prevent undermining of the adjacent street.

The proposed By-law maintains the following elements of the existing By-law:

- all elements of a non-standard boulevard treatment immediately become the property of the City as soon as they are installed and may be removed or damaged by the City without the permission of or compensation to the owner of the adjacent property;
- the owner of adjacent property is required to maintain the boulevard (for example by mowing the grass);
- storing material (other than soil) on the boulevard, and conducting business on the boulevard are all prohibited without a permit from the Director.

The Director’s authorization would be required for non-standard boulevard treatments that do not fall within these standards. Authorization would also be required for any non-standard treatment on medians and traffic islands.

The City may inadvertently, or in the course of required maintenance activities, damage non-standard treatments in the course of day to day operations (example: snow clearing and underground utility repairs). It is recommended that, since objects and vegetation become the property of the City when placed or planted in boulevards, the City should not pay claims for damage to objects or vegetation in boulevards

The City's current policy is to repair boulevard damage by planting turf. To replace flowers or other non-standard treatments when and if they are damaged would be cost prohibitive.

The proposed By-law has been drafted in a plain language format which is easier to read than the existing By-law.

The proposed By-law would repeal a provision in Schedule A of the Encroachment By-law that sets out rules for landscaping and rockscaping in the St. Boniface – St. Vital Community. This provision requires that rockscaping features may not exceed 0.6 metres (23.6 inches) in height, may not be placed closer than 3 metres from the curb and must not obscure visibility at intersections. This provision has not been applied in recent memory. City staff responsible for administering the Encroachment By-law were unaware of the existence of this provision. Given that the proposed by-law will regulate non-standard treatments throughout the city; this provision of the encroachment bylaw is not needed.

Financial Impact Statement **Date:** December 7, 2006

Project Name:

Overhauled Boulevard Maintenance By-law

COMMENTS:

There are no financial implications expected as a result of the recommendations.

Original signed by Darcy Stewart, CA

4026

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Legal Services Division, Corporate Services Department
Planning, Property and Development Department
Risk Management Branch, Corporate Finance Department

External Consultation With:

THIS REPORT SUBMITTED BY:

Department Public Works
Division Parks and Open Spaces
Prepared by: Diane Banash
File No.

THE CITY OF WINNIPEG

BY-LAW NO. .

A By-law of THE CITY OF WINNIPEG to require maintenance and encourage beautification of boulevards.

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

Short title

1. This By-law may be cited as the Boulevard Maintenance By-law.

Definitions

2. In this By-law

"adjacent", when referring to the proximity of boulevards to private property, includes boulevards that are separated from private property by sidewalks;

"boulevard" means the portion of a street on either side of a roadway but does not include a sidewalk, median or traffic island;

"Director" means the Director of Public Works for the City of Winnipeg or delegate;

"designated employee" means the Director of Public Works for the City of Winnipeg or an employee of the City of Winnipeg whom the Director has authorized to administer or enforce all or part of this By-law;

"extended boulevard" means a boulevard that

(a) is at least 20 feet wide; or
(b) is intended to accommodate future street development;

"litter" has the same meaning as in the Anti-Litter By-law;

"median" means a portion of a street in the centre of a roadway that is maintained to improve traffic safety by separating lanes of opposing traffic and is not intended to carry vehicular traffic;

"non-standard treatment" means a modification of the turf planted by the City on a boulevard, median or traffic island and includes aggregate, objects, solid materials or vegetation planted or placed within the boulevard;

"private approach" means any modification to a boulevard that facilitates vehicular access to the adjacent private property;

"street" means any place or way, including any structure forming part thereof, which or any part of which the public is ordinarily entitled to use for the passage of vehicles, with or without fee or charge therefor, and includes all the space between the boundary lines thereof;

"shrub" means a woody plant smaller than a tree and having a very short stem with low branches;

"roadway" means the portion of a street that is improved, designed or ordinarily used for vehicular traffic and includes an alley but does not include a bicycle path;

"traffic island" means a portion of a street located between lanes of traffic for the control of vehicle movement or pedestrian refuge and is not intended to carry vehicular traffic;

"tree" means any species of woody plant which, at maturity, is usually 5 or more metres in height, having one or more self-supporting trunks and includes the roots, branches, trunk, crown and all parts thereof; and

"turf" means non-ornamental grass or grasses that have been planted.

Obligation to maintain boulevard

3(1) Subject to the provisions of this section and section 4, the owner and occupant of property adjacent to a boulevard and jointly and severally responsible for maintaining that portion of the boulevard that is adjacent to the property.

3(2) The obligation imposed in subsection (1) includes the obligation to ensure that no aspect of the boulevard nor anything located on the boulevard contravenes the restrictions on non-standard boulevard treatments set out subsection 5(2) or, alternatively, that the boulevard fully complies with the Director's written authorization issued under section 6.

3(3) The obligation imposed in subsection (1) includes the obligation to

(a) keep turf and any vegetation that has not been planted trimmed to a maximum length of 15 centimetres;
(b) ensure that vegetation that has been planted, other than turf, is no more than 1.0 metre in height;

(c) control noxious weeds as identified in *The Noxious Weeds Act*; and

(d) maintain the boulevard free of litter.

3(4) The obligation imposed in this section applies whether or not a non-standard boulevard treatment has been applied to the boulevard.

3(5) The obligation imposed in subsection (1) does not include the responsibility to maintain trees within the boulevard and does not supersede any Policy adopted by the City respecting the removal of trees from boulevards.

Exceptions

4 The obligation imposed in section 3 and the authorization provided in section 5 do not apply to the following:

(a) boulevards adjacent to regional streets listed in Schedule "E" of the Streets By-law No. 1481/77;

(b) boulevards flanking properties adjacent to regional streets listed in Schedule "E" of the Streets By-law No. 1481/77;

(c) ditches in which turf has never been planted;

(d) boulevards located at the rear of a property;

(e) extended boulevards.

Authorization for non-standard boulevard treatments

5(1) Without restricting the obligation imposed under section 3 and subject to the provisions of this By-law, the owner or occupant of property may apply a non-standard treatment to that portion of the boulevard that is adjacent to the property.

5(2) The owner or occupant of property need not obtain authorization or permission from the City in applying a non-standard boulevard treatment under subsection (1) if the non-standard boulevard treatment:

(a) does not interfere with the movement of vehicular or pedestrian traffic upon the right of way;

(b) does not obscure the sightlines of pedestrians or drivers of vehicles;

(c) does not obscure or obstruct access to

(i) fire hydrants;

(ii) other installations belonging to the City of Winnipeg, Manitoba Hydro or Manitoba Telephone System; or

(iii) post office boxes located in the boulevard;

(d) does not inhibit or obstruct snow removal operations, including the storage of snow removed from the roadway or sidewalk;

(e) does not include any object weighing more than 10 kilograms;

(f) does not include vegetation that is or will be more than 1.0 metre in height when fully grown;

(g) does not include a shrub or shrubs;

(h) does not include noxious weeds as defined in *The Noxious Weeds Act*;

(i) does not include vegetation other than turf located within 1.0 metre from the curb;

(j) does not include vegetation other than turf within 0.5 metre from the public sidewalk;

(k) does not result in trees planted or removed except to the extent authorized under the tree removal policy of the City of Winnipeg;

(l) does not result in the placement of aggregate materials smaller than 20 millimetres (¾ inch) or greater than 40 millimetres (1½ inches) on the boulevard;

(m) does not result in the placement of aggregate to a depth of more than 75 millimetres (3 inches);

(n) with the exception of concrete paving stones that are installed flush to grade, does not result in the placement of asphalt or concrete on the boulevard;

(o) does not create or widen a private approach on the boulevard;

(p) ensures that the boulevard is graded so that water flows from the edge of the street into the roadway and that vegetation or objects do not obstruct rainwater and snow melt from flowing from the edge of the street into the roadway; and

(q) in the absence of an agreement with the owner of neighbouring property, does not allow non-standard vegetation to spread beyond that portion of the boulevard that is adjacent to his or her property.

5(3) Where a non-standard boulevard treatment results in the undermining or failure of the adjacent roadway, the owner of the property adjacent to the boulevard to which a non-standard treatment has been applied must pay a fee equal to the reasonable costs of replacing the non-standard boulevard treatment with turf.

Permit required for other non-standard boulevard treatment and non-standard treatment of medians and traffic islands

6(1) Except as authorized in section 5, no person may apply a non-standard boulevard treatment without written authorization from the Director.

6(2) No person may apply a non-standard treatment to a median or traffic island without written authorization from the Director.

6(3) The Director may issue a permit for a non-standard treatment pursuant to subsections (1) and (2) only if he or she is satisfied that the non-standard treatment:

(a) will comply with applicable by-laws;

(b) will not

(i) interfere with the movement of vehicular or pedestrian traffic upon the right of way;

(ii) obscure the sightlines of drivers of vehicles or of pedestrians;

(ii) obscure or obstruct access to fire hydrants or installations belonging to the City of Winnipeg, Manitoba Hydro or Manitoba Telephone System;

(iii) inhibit or obstruct snow removal operations, including the storage of snow removed from the roadway or sidewalk; or

(iv) cause damage to the roadway or any installation of the City; and

(c) is otherwise in the public interest.

6(3) The Director may impose conditions on an authorization issued under this section, including requiring that the property owner agree to provide an indemnity or a damage deposit to the City.

Items placed in boulevard become City property

7 Where a person is authorized by or pursuant to this By-law to apply a non-standard boulevard treatment to a portion of the boulevard or a non-standard treatment to a median or traffic island, the authorization is granted subject to the condition that any

(a) vegetation planted;

(b) items placed on and affixed to the boulevard; and

(c) improvements made to the boulevard;

become the property of the City of Winnipeg and are subject to removal or destruction by the City, or with the authorization of the City, without any obligation on the City to replace or repair them or to compensate the owner or occupant of the property for their loss or destruction.

Damage to boulevards

8(1) Subject to section 5, in the absence of written authorization issued by the Director, no person may

(a) break, dig up, remove, injure, damage or deface trees, shrubs, plants or turf located in a boulevard;

(b) make an excavation deeper than 30 centimetres (one foot) into a boulevard;

(c) subject to subsection (2), deposit or store any substance upon a boulevard.

8(2) Notwithstanding clause (1)(e), the owner or occupant of property adjacent to a boulevard may deposit soil or well-rotted lawn dressing on a boulevard for up to seven days.

8(3) The Director may issue a permit authorizing the activities referred to in this section after taking into account:

(a) the possibility of damage to the boulevard as a result of the proposed activity;

(b) the safety of the applicant, motorists, pedestrians and others while the activity takes place;

(c) other relevant facts;

and may impose reasonable conditions on the permit.

Conducting business on a boulevard
9(1) In the absence of a permit issued by the Director, no person may use a boulevard for business purposes or conduct business on a boulevard.

9(2) The Director may issue a permit authorizing a person to use a boulevard for business purposes or conduct business on a boulevard after taking into account:

(a) the possibility of damage to the boulevard as a result of the proposed activity;

(b) the safety of the applicant, motorists, pedestrians and others while the activity takes place;

(c) the impact on other businesses in the area; and

(d) other relevant facts;

and may impose reasonable conditions on the permit.

Director may enter into agreements
10. The Director may enter into agreements with individuals, businesses, organizations or groups to plant, prune, protect, nurture or remove trees in the street.

Designated employees powers
11. Designated employees may conduct inspections and take steps to administer and enforce this By-law or remedy a contravention of this By-law in accordance with The City of Winnipeg Charter and, for those purposes, have the powers of a “designated employee” under The City of Winnipeg Charter.

Orders to remedy non-compliance
12. Any order to remedy a contravention of this By-law must be issued in accordance with The City of Winnipeg Charter.

Address for service
13. Where an address for service must be determined, it shall be done as follows:

(a) if the person to be served is the owner of real property, the address maintained by the tax collector for the purpose of issuing the tax notice for that property;

(b) if the person to be served is the occupant of real property, the street address for that property; and

(c) If the person has applied for written authorization from the Director, the address provided in the application.

Appeal from Order
14. An appeal from an order or decision made pursuant to this By-law that is subject to appeal may be made to the Standing Policy Committee on Infrastructure Renewal and Public Works in accordance with *The City of Winnipeg Charter*.

Encroachment By-law amended
15. Section 6 of Schedule A of the Encroachment By-law No. 692/74 is hereby repealed.

Boulevard Maintenance By-law No. 5895/92 repealed
16. The Boulevard Maintenance By-law No. 5895/92 is hereby repealed.

DONE AND PASSED, in Council assembled, this day of , 2006.

_____
Mayor

_____
City Clerk

Approved as to content:

_____
Director of Public Works

Certified as to form:

_____
for City Solicitor/Manager of
Legal Services